

CLARKE COUNTY BOARD OF SUPERVISORS
July 20, 2004 Regular Meeting
Board of Supervisors Meeting Room

9:00 a.m.

At a meeting of the Board of Supervisors of Clarke County, Virginia, held in the Board of Supervisors' Meeting Room, Second Floor of the Circuit Courthouse, 102 N. Church Street, Berryville, Virginia on Tuesday, July 20, 2004.

Present

Chairman Staelin, Vice Chairman Hobert, Supervisor Dunning, Supervisor Byrd, Supervisor Weiss

Also Present

Gary Hornbaker, Mike McCall, Gem Bingol, Bud Nagelvoort, Chuck Johnston, Tom Judge, David L. Ash, Alex Bridges, Layla Wilder, Val Van Meter, and other citizens and members of the press.

Call To Order

Chairman Staelin called the meeting to order at 9:06 a.m.

Adoption of Agenda

Add to VDOT: Set Time & Place for Public Hearing on Secondary Highway

Add Closed Session: Discussion with Legal Counsel

Chairman Staelin advised the Board that Robert Mitchell, County attorney, would not be available for the closed session until 2:30 pm. He informed the members that to accommodate representatives from the School Board portions of the Finance Committee items would be discussed at 11:30 am. He further advised the update from David Nelms, USGS, would be presented as time allowed.

Vice Chairman Hobert moved to adopt the agenda as modified.

The motion carried by the following vote:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Absent
Supervisor Weiss	-	Aye

Humane Foundation Open House

Supervisor Byrd informed the Board that the Open House for the new Animal Shelter scheduled for Sunday, August 22, 2004, has been postponed due to the inability to have the kennels completed in sufficient time. The event has been moved to September and the date will be announced closer to that time.

Approval of Meeting Minutes

Vice Chairman Hobert noted a change to Page 2 Book 18 requesting that in paragraph two the words "*one-time type of*" be struck.

Vice Chairman Hobert moved to approve the minutes for the June 15, 2004 regular meeting as modified.

The motion carried by the following vote:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Absent
Supervisor Weiss	-	Aye

Consent Agenda

2004 CLG Grant Application

David Ash, County Administrator, provided an overview of the grant application.

Supervisor Byrd moved to accept the CLG Grant application.

The motion carried by the following vote:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

Citizen Comment

No citizens appeared to address the Board.

Virginia Department Of Transportation

Jeff Lineberry appeared before the Board of Supervisors to provide the monthly update. Bob Childress accompanied Mr. Lineberry.

Speed Reductions on Unpaved Roads

Jeff Lineberry advised the Board that legislation initiated by Frederick County to reduce speeds on unpaved roadways to 35 MPH was passed for Frederick, Warren, Loudoun and Clarke Counties. Supervisor Dunning expressed his support for this legislative action. John Staelin expressed concern that the legislation had been enacted and local government had not been informed. So that enforcement can begin, Chairman Staelin said that he would meet with Tony Roper, Clarke County Sheriff, and advise him of the new legislation.

Speed Studies

Jeff Lineberry told the Board that he had forwarded the completed speed limit studies to Richmond and that he anticipated approval in three to four weeks. Supervisor Dunning expressed his concern that VDOT did not delegate authority on local matters to VDOT's Resident Engineers.

The Traffic Engineer is planning to ride all of the routes in Clarke County and Jeff Lineberry extended an invitation to the Board members to ride with them through their districts. Mr. Lineberry will provide the date and time to the Board for scheduling.

John Staelin, Barbara Byrd and David Weiss provided the following list of roads in their districts for review for speed limit reduction.

Route No.	Route Name	From	To	Request
610	Clifton Road	Route 340	Route 641	Lower speed to 45
613	Springsbury Road	Lockes Mill Road	Approximately 1 mile North of Lockes Mill Road	Lower speed to 45
613	Parshall Road	Route 7	Route 621	Lower speed to 45
617	Old Chapel Road	Boyce Town Limit	Route 620	Lower speed to 45
617	Briggs Road	Route 255	Route 618	Lower speed to 45
620	Browntown Road	Route 255	Route 340	Lower speed to 45, consider 4-way stop at intersection with Route 617
621	Tilthammer Mill Road	Route 723	Route 651	Lower speed to 45
621	Chilly Hollow Road	Route 7	Lockes Mill Road	Lower speed to 45
632	Triple J Road	Route 7	Route 657	Lower speed to 45
632	Crums Church Road	Route 7	Route 761	Lower speed to 45
633	Annfield Road	Route 652	Route 340	Lower speed to 45
635	Pierce Road	Route 7	Route 660	Lower speed to 45
639	Allen Road	Route 641	Route 632	Lower speed to 45
640	Withers La Rue Road	Route 632	State Line	Lower speed to 45
641	Lewisville Road	Route 340	State Line	Lower speed to 45
645	Wrights Mill Road	Route 7	Frederick County Line	Lower speed to 45
651	Clay Hill Road	Route 621	Route 723	Lower speed to 45
652	Summerville Road	Route 620	Route 633	Lower speed to 45
653	Kimble Road	Route 7	Route 632	Lower speed to 45
654	Stringtown Road	Route 611	Route 653	Lower speed to 45
656	Longmarsh Road	Route 761	Route 632	Lower speed to 45
659	Fishpaw Road	Route 659	Route 660	Lower speed to 45
660	Russell Road	Route 7	Route 645	Lower speed to 45
661	Wadesville Road	Route 672	Route 761	Lower speed to 45
672	Swimley Road	Frederick County Line	Route 761	Lower speed to 45
674	Cather Road	Route 656	Route 660	Lower speed to 45
723	Millwood Road	Route 50	Millwood	Lower speed to 45
761	Old Charles Town Road	Frederick County Line	State Line	Lower speed to 45

Supervisor Dunning will provide VDOT a list for the White Post District.

Litter Committee Request

The Clarke County Litter Committee has requested that the Board of Supervisors enter into an agreement with the Virginia Department of Transportation for the removal of illegal advertisement within the limits of highways. Supervisor Dunning requested that the Litter Committee be made the beneficiary of any fines levied.

Bud Nagelvoort, Litter Committee representative, urged the Board to set public hearing on this matter. He stated that VDOT has given the Adopt-A-Highway Program participants permission to remove illegal signs in VDOT right-of-ways. He opined that stronger action needed to be taken to discourage the practice of placing illegal signs on VDOT right-of-ways. This practice is considered to be detrimental to the health, safety and welfare of County residents and negatively impacts the appearance of the highways.

Jeff Lineberry cautioned that some of these signs are for political candidates, real estate and civic events. The designee responsible for removing the signs must know the location of the right-of-way and whether the sign has been placed there illegally. Vice Chairman Hobert requested more information regarding the procedure and designee assignment. He further requested modifications to the agreement to correct typographical errors in paragraphs four and five and to strike the last sentence in paragraph five "The parties must renew this Agreement, in writing."

Vice Chairman Hobert moved to set for public hearing the matter of the Resolution on the agreement between The Virginia Department Of Transportation and the Board Of Supervisors Of Clarke County, Virginia, for the removal of illegal advertisement within the limits of highways as modified on September 21, 2004, at 10:00 a.m. or as soon thereafter as the matter may be heard.

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

Other Matters

There was discussion with VDOT on a variety of matters.

- Supervisor Byrd expressed her thanks for the work on Brucetown Bridge. She advised that citizens are still concerned about large trucks and speeds on the road.
- John Staelin requested comment regarding thru-truck traffic on Route 255 through Millwood. Jeff Lineberry advised that thru-truck traffic was discussed with concerned citizens during a meeting held last week. He advised that if it is destination traffic VDOT will not be able to stop the trucks.
- The Public Hearing on the Secondary 6-Year Plan will be the topic of discussion for the September 14, 2004 Board of Supervisors Work Session. The actual date and time of the public hearing will be set at the regular meeting of the Board of Supervisors in September.
- Striping for left-turn lanes in the Town of Boyce is complete.
- The timbers on the bridge on Route 606 will be replaced and deck clips tightened.
- VDOT is working on the acquisition of easements on Route 700.

Special Entertainment Permit – Bluegrass Festival at Watermelon Park on October 2, 2004

Frazer Watkins, festival organizer, appeared before the Board to review the Special Entertainment Permit for the Bluegrass Festival at Watermelon Park scheduled for October 2, 2004. David Ash informed the Board that an agreement with an EMT to provide service was included in the packet as requested. Supervisor Weiss commended Mr. Watkins on the completeness of the application.

At 10:08 am, Chairman Staelin opened the public hearing to receive public comment.

Bud Nagelvoort, Berryville, queried the date of the proposed festival and was informed that it would be held from 2 pm to 10 pm on Saturday, October 2, 2004.

There being no other persons present wishing to address the Board regarding this matter the public comment portion of the hearing was closed at 10:09 am.

Frazer Watkins, responding to questions from the Board, advised that it was not being held for a charitable cause and the beneficiaries for the event were the organizers. Chairman Staelin said that there was no requirement that a festival must be conducted for charitable purposes and that the Board recognizes the need for local businesses to generate revenue.

Supervisor Weiss moved to approve the Special Entertainment Permit for the Bluegrass Festival at Watermelon Park scheduled for October 2, 2004.

The motion carried as follows:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

Public Hearing – Text Amendment [TA-04-08]

The Clarke County Planning Commission recommends the amendment of the County Zoning Ordinance:

- a. Section 3-A-1-a-(2) Accessory Uses in the AOC Zoning District;*
- b. Section 3-A-2-a-(2) Accessory Uses in the FOC Zoning District;*
- c. Section 3-A-3-a-(2) Accessory Uses in the Rural Residential Zoning District;*
- d. Section 3-C-2 Supplementary Regulations; and*
- e. Section 9-B Definition of the terms and Farm Winery,*
so as to limit the number and location of dwellings with less than 600 square feet, modify the regulations for County Inn, state that Bed & Breakfast Home Occupations do not include places of public assembly, limit the bottling production of Farm Wineries, and require a portion of the products used to make wine be grown on the property of the Farm Winery.
TA-04-08

Chuck Johnston appeared before the Board to review the proposed text amendment. Due to the variety of the issues in the proposed text amendment, Chairman Staelin requested they be acted on individually.

Dwellings with less than 600 square feet

Chuck Johnston reviewed the Planning Commission recommendation for dwellings with less than 600 square feet. Chairman Staelin requested the reasoning behind the 300-foot rule for locating these dwellings. Mr. Johnston stated that the Planning Commission believed that they should be in close proximity to the main house on the lot. Supervisor Dunning, Board of Supervisors liaison to the Planning Commission, said that the close proximity keeps away the temptation to subdivide the property.

Supervisor Weiss asked about the variance process if the location was not acceptable for the auxiliary dwelling. Mr. Johnston stated that the variance process was available to anyone but variances are granted on topography not convenience. Following discussion, Chuck Johnston advised that the ordinance could be modified to include variance consideration for land in easement.

At 10:20 am, Chairman Staelin opened the public comment portion of the public hearing. There being no persons present to address the Board regarding this matter the public comment portion of the hearing was closed.

Vice Chairman Hobert requested information regarding the number of these dwellings in the County and the percentages of dwellings used for agriculture, relatives and/or rentals. Supervisor Dunning requested Planning staff to work with the Building Department to get the number of these dwellings located in the County. Vice Chairman Hobert said that these dwellings set a pattern of development in the County that, if allowed to continue, will shape future development. Chairman Staelin stated that Robert Mitchell, County attorney, should be consulted on this matter.

Supervisor Dunning moved to continue discussion on dwellings with less than 600 square feet until the next regular meeting of the Board of Supervisors scheduled for August 17, 2004.

The motion carried as follows:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

Modify The Regulations For Country Inn

Mr. Johnston reviewed the Planning Commission recommendation to modify the regulations for country inn. The Planning Commission proposes that the definition include that a country inn is only allowed as an accessory use to a single-family dwelling and such guest rooms should be located in or attached to such dwelling. For parcels larger than 20 acres, the single-family dwelling may be considered to be the principal dwelling on the property or a tenant house. Mr. Johnston stated that all previously-approved special uses for county inns will be grandfathered that includes such places as L'Auberge Provencal.

The Planning Commission recommended meal service and/or permanent places of assembly may be provided with a limit for permanent places of assembly to 49 persons. He informed the Board that between Building and Health Codes there are established thresholds for assembly 49, 99, etc.; and once set, you can go down in number but not higher. Mr. Johnston said that special assembly events, such as weddings, should be addressed as a special use. A reference in the definition has been made to the Special Entertainment Permit process, which must be followed, where applicable, for events outside of the special use permit.

Mr. Johnston opined that the most significant modification was to the proximity of the guest rooms to the inn. Vice Chairman Hobert asked if the inclusion of the language "*located in or attached to*" was used to enforce a design standard and what was more important – proximity or attachment. Supervisor Weiss stated that in the future if the country inn is physically attached it reduces the likelihood of being used as a separate dwelling opining that this is the underlying reason for this requirement. Jesse Russell, Zoning Administrator, put forth his opinion that if no dwelling unit right is available on the property than the country inn should be attached. Mr. Weiss noted problems if no dwelling unit rights are available for the structure. Supervisor Byrd put forth the possibility of a campus-like set up for a country inn. Supervisor Dunning said that he would like to see it kept within a certain core but would not want to discourage some creative campus set up. Chairman Staelin concurred that using existing structures on the property with development rights would be acceptable however building multiple cottages that are spread out on the property can result in problems if there are no development rights available. Mr. Johnston put forth that the Board might wish to review this portion of the definition if in future a special use application is submitted in which the applicant requests use of existing outbuildings that are not attached.

At 10:38 am Chairman Staelin opened the public comment portion of the public hearing.

Betsy Pritchard, Smithfield Farm Bed and Breakfast, Berryville: asked for clarification on the current two-meal requirement.

Chuck Johnston told Ms. Pritchard that in the proposed amendment meal service was optional.

Supervisor Dunning spoke regarding the recent Economic Development Advisory Committee equine forum during which the role of local Bed and Breakfasts was discussed. He said that in jurisdictions where they are associated with equine events they are prospering. Mr. Dunning advised that Bed and Breakfasts should be encouraged to participate with local events and suggested they be advertised in event materials.

There being no other persons present to address the Board regarding this matter the public comment portion of the hearing was closed at 10:44.

In order to improve the economic viability of county inns, the Board instructed Mr. Johnston to increase the maximum number persons for permanent places of public assembly from 49 to 99.

Supervisor Dunning moved to approve the text amendment for the regulations for County Inns as modified.

The motion carried as follows:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

9 DEFINITIONS

9-B DEFINITIONS

9-B- 42
(7/17/90)
(9/18/90)
(4/18/00)

~~COUNTRY INN: Any structure containing not more than 12 guest rooms, in which structure lodging and at least two meals per day are provided for compensation. A Country Inn may also include assembly or meeting activities as an accessory use; however, the total design capacity of permanent place(s) of assembly shall be for fewer than 50 people. The term Country Inn includes Tourist Home, Guest Ranch, Guest Farm, or other similar use.~~

An establishment offering for compensation to the public not more than 12 guestrooms for transitory lodging or sleeping accommodations of not more than 14 days of continuous occupancy. A Country Inn shall be allowed only as an accessory use to a Single Family Detached Dwelling. Guestrooms shall be located in or attached to such a dwelling. For parcels larger than 20 acres, the Single Family Detached Dwelling may be the principal dwelling on the property and/or a tenant house. As accessory uses to a Country Inn, meal service and/or permanent place(s) of public assembly may be provided. The total maximum capacity of areas used for meal service and/or permanent places of public assembly shall be 99 people. Such accessory uses shall be located in or attached to such a Single Family Dwelling. Events, as defined by Clarke County Code Chapter 57, shall obtain all necessary approvals. The term Country Inn includes Tourist Home, Guest Ranch, Guest Farm, or other similar use.

Home Occupation

Chuck Johnston provided an overview of the recommendation from the Planning Commission for modifications to Home Occupation. Jesse Russell, Zoning Administrator, advised that home occupations do not go with the house and a new occupant must re-apply. Supervisor Weiss said that the proposed changes provided better control and allows input by neighbors of the home occupations.

At 11:05 am Chairman Staelin opened the public comment portion of the public hearing.

Betsy Pritchard, Smithfield Farm Bed and Breakfast, Berryville: told the Board that to accommodate guests at her bed and breakfast she has served breakfast as early as 4:30 am to as late as 12:30 pm explaining some of the circumstances that necessitate such flexibility. She opined that enforcing a time limit, between the hours of 6 a.m. to 12 noon, for the service of meals would be virtually impossible.

Sandra Sowada, Lost Dog Bed and Breakfast, Berryville: queried the Board as to special events hosted at a bed and breakfast.

Chuck Johnston advised that the text amendment would not permit any permanent or temporary place of public assembly. Special events at a bed and breakfast are subject to the Special Entertainment Permit process; and if they wanted to provide a permanent place for weddings or other assembly events, the property would have to be approved as a Special Use. Supervisor Weiss said that events of fifty or more persons are intrusive; and with the Special Entertainment Permit process, it allows everyone to take part in the discussion. Mr. Johnston reiterated that home occupations are in residential neighborhoods.

There being no other persons present to address the Board regarding this matter the public comment portion of the hearing was closed at 11:12 a.m.

Supervisor Dunning concurred with Betsy Pritchard that a time limit would be difficult to enforce; and by title, a bed and breakfast limits the number of meals it serves. He requested that Mr. Johnston remove the text "between the hours . . ." and to add a reference to Chapter 57 of the Code of Clarke County, which details the Special Entertainment Permit application process.

Supervisor Byrd moved to approve the text amendment for home occupations as modified.

The motion carried as follows:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

9-B-86 (6/18/02) HOME OCCUPATION: An occupation conducted in a dwelling unit as a secondary use. Home occupations shall have all permits and licenses as needed from the Clarke County Building Department, the Virginia Department of Health, and any other appropriate federal and state agency. In addition:

9-B-87-a(7/15/97)No more than one person other than members of the family residing on the premises of less than 20 acres shall be engaged in such occupation, or not more than two such persons on premises of 20 acres or more;

9-B-87-b(5/20/86)The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants;

~~9-B-87-c, and n~~ No more than 25 percent of the floor area of the dwelling unit, or not more than 25 percent of said floor area if the home occupation is conducted in an accessory building, shall be used in the conduct of the home occupation;

9-B-87-d A bed and breakfast may use a maximum of three *guestrooms* for the conduct of the home occupation, regardless of the floor area of the dwelling unit. ***As an accessory use to a bed & breakfast, breakfast meal service may be provided only for overnight guests. No permanent or temporary place of public assembly shall be provided, except for events permitted by Clarke County Code Chapter 57.***

9-B-87-eThere shall be no change in the outside appearance of the building or premises, nor other visible evidence of the conduct of such home occupation, other than one sign, not exceeding two square feet in area, non-illuminated;

9-B-87-fAny need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard;

9-B-87-gNo equipment or process shall be used in such home occupation that creates electrical interference, fumes, glare, noise, odors, or vibration, detectable to the

normal senses off the lot, if the occupation is conducted in a single family residence, or outside the dwelling unit, if the occupation is conducted in other than a single family residence. In the case of electrical interference, no equipment or process shall be used that creates audible or visual interference in any radio or television receivers off the premises or causes fluctuations in line voltage off the premises;

9-B-87-h Housing for three or fewer Older Persons requiring medical and/or food support services, boarding and rooming houses, tourist homes, and private educational institutions shall not be deemed home occupations.

Definition of Farm Winery

Chuck Johnston provided an overview of the recommendation of the Planning Commission for changes in the definition of Farm Winery. He said that the reference limiting the production to 17,500 cases was the industry-defined standard for a small to medium winery. The limit was proposed since farm wineries are intended to be primarily agricultural in nature not industrial and major bottling operations are not appropriate in a rural location. The proposed amendment also includes reference to Chapter 57 of the Code of Clarke County, which details the Special Entertainment Permit application process.

Terri Cofer Beirne, attorney for Virginia Wineries Association, appeared before the Board to advise that the proposed limitation was in violation of the Code of Virginia, Alcoholic Beverage Control, citing § 4.1-128 Local ordinances or resolutions regulating alcoholic beverages. This ordinance states that no locality can "adopt any ordinance or resolution which regulates or prohibits the manufacture, bottling ... of alcoholic beverages in the Commonwealth." She told the Board that localities do have the right to control where alcohol is sold but they cannot usurp the authority of the State.

Ms. Beirne also provided an explanation as to the differences between a Class A and a Class B operation that basically differentiates how much of the product is grown in Virginia, as well as on site.

Mr. Johnston explained that the intent was to limit the number of cases; but in setting the proposed limit, they encountered varied case sizes. He said that the Planning Commission proposed the change because they were worried about the impact of an industrial bottling production.

Ann Heidig, Virginia Wineries Association and winery owner from Bumpass, Virginia: put forth that the industry standard for a case is 2.38 gallons, which is the amount used to determine the federal excise tax. She noted that the State uses nine liters. She advised that bottling is incidental to a farm winery. Production limits can have a negative impact on sales and distribution. She opined that the right-to-farm does not protect bottling specifically but is included.

John Staelin stated that the Board would discuss this matter with the County attorney with whom they would be meeting in the afternoon. He invited any interested parties to stay for that discussion advising that some portion of the meeting would be held in closed session.

At 11:34 am, Chairman Staelin opened the public comment portion of the public hearing.

Ann Heidig, Virginia Wineries Association and winery owner from Bumpass, Virginia: spoke against limiting production. She opined that this would limit the growth of wineries explaining that 17,500 cases equates to approximately 65 acres of grapes. She put forth that studies show 50 acres is the break-even point for a winery.

Ms. Heidig told the Board that bottling wine is not like soft-drink bottling running 24 hours a day seven days a week. She said that she, and many others, uses mobile bottling operations. She described the mobile operation explaining that the one

she uses is in a tractor-trailer and some others are about the size of a car-hauling trailer. Her winery produces 5,000 to 7,000 cases each year and bottles twice during the year. The wine is kept in tanks or barrels making transportation of their product to a fixed bottling operation difficult if not impossible. Ms. Heidig further noted that wineries bring jobs to the community.

Supervisor Dunning likened wineries to the milk industry. He advised that the County was not trying to harm anyone but is only trying to protect neighbors. He observed that the right-to-farm law does have some flaws. Supervisor Weiss put forth that the Code of Virginia does not require bottling just because you grow grapes citing an example that raising beef does not require that you process the meat.

Gary Hornbaker, Berryville: addressed the Board restating that the wine industry does use mobile bottling operations because they cannot move casks or barrels. He explained that the wine goes from the barrels into the bottles. He concurred that the actual bottling operations were seasonal and of short duration.

There being no other persons present to address the Board regarding this matter the public comment portion of the hearing was closed at 11:50 a.m.

Chairman Staelin expressed his appreciation for the information provided during the public comment portion of the hearing surmising that the proposed amendment required more thought.

Following closed session with legal counsel, Mr. Staelin informed the Board that Bob Mitchell, having just received the proposed amendment, required additional time to review. Discussion on the matter was continued to the next regularly scheduled meeting of the Board of Supervisors.

Terri Cofer Beirne offered to arrange a visit to Willowcroft Winery so that interested Board members could look at a bottling operation. It was determined that she would coordinate the visit with John Staelin.

Public Hearing – Text Amendment [CC-04-03]

The Clarke County Board of Supervisors will consider the amendment of the Clarke County Code Chapter 180, so as to add Article VIII, Section 180-34 Sewer Use Ordinance.

Alison Teetor, with Larry Johnson, View Engineering representative, reviewed the proposed text amendment. She advised that the County must pass a sewer use ordinance to receive final payment from DEQ for the Millwood sewer project. Ian Williams, Clarke County Sanitary Authority Chair, stated that the Sanitary Authority had worked through several drafts of the proposed ordinance. Ms. Teetor told the Board that Larry Johnson and Bob Mitchell, County Attorney, had reviewed the proposed text amendment and the changes they proposed were noted in the materials distributed for Board review. Mr. Johnson informed the Board that references to BOD's in excess of 250 mg/l had been changed to 400 mg/l due to the design of the Boyce Treatment Plant.

At 12:09 pm, Chairman Staelin opened the public comment portion of the public hearing. There being no persons present desiring to address the Board regarding this matter the public comment portion of the hearing was closed.

Supervisor Byrd moved to approve text amendment CC-04-03 amending the Code of Clarke County Chapter 180 so as to add Article VIII, Section 180-34 Sewer Use Ordinance as modified.

The motion carried as follows:

Chairman Staelin - Aye

Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

The exact text for this amendment is on file in the Board of Supervisors meeting materials for July 20, 2004.

Set Public Hearing – Text Amendment [CC-04-04]

The Clarke County Board of Supervisors will consider the amendment of the Clarke County Septic Ordinance, Section 143-11, so as to delete additional criteria for open space easement properties eligible for a variance. [CC-04-04]

David Ash provided an overview of the proposed changes.

Supervisor Dunning moved to set the matter for public hearing on September 21, 2004, at 10:00 a.m. or as soon thereafter as the matter may be heard.

The motion carried as follows:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

Set Public Hearing – Special Use/Site Plan [SUP-04-02]

Alex Ratcliffe requests approval of a Special Use and Site Plan for limited vehicular repair located at 1793 Swimley Road, Tax Map Parcel 3-((A))-8A, Longmarsh Magisterial District, zoned Agricultural-Open Space-Conservation (AOC). [SUP-04-02]

Chuck Johnston provided an overview of the Special Use/Site Plan request.

Supervisor Dunning moved to set the matter for public hearing on September 21, 2004, at 10:00 a.m. or as soon thereafter as the matter may be heard.

The motion carried as follows:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

Presentation from the CFFW Regional Adult Detention Center Jail Board

David Ash provided an overview of the Comprehensive Agreement. Bruce Conover, Assistant Superintendent CFFW Regional Adult Detention Center, appeared before the Board. Major Conover apprised the Board that the cost for the new work release facility is estimated to be between \$7.3MM to \$7.8MM. The outside of the work release facility is to be hardened to allow for other uses. Clarke County's share for the proposed construction is approximately \$44,000 per year, without State assistance, for a period of 20 years.

Major Conover, responding to a query by Supervisor Dunning, informed the Board that the majority of the 84% increase in population comes from drunk driving and drug offenses. Other factors for increased jail population are mandatory sentencing, shifts in attitude, and cessation of parole. Bruce Conover opined that the recently enacted drunk driving laws would increase jail population.

Vice Chairman Hobert moved to adopt the resolution to approve a comprehensive agreement to develop, design and construct a work release facility to expand the Clarke-Fauquier-Frederick-Winchester Regional Adult Detention Center.

The motion carried as follows:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

RESOLUTION

A RESOLUTION TO APPROVE A COMPREHENSIVE AGREEMENT TO DEVELOP, DESIGN AND CONSTRUCT A WORK RELEASE FACILITY TO EXPAND THE CLARKE-FAUQUIER-FREDERICK-WINCHESTER REGIONAL ADULT DETENTION CENTER

WHEREAS, the Clarke-Fauquier-Frederick-Winchester Regional Adult Detention Center (hereafter referred to as the Regional Jail) is overcrowded, and public safety and efficient operations are deleteriously impacted by the inmate populations that exceed the design capacity; and

WHEREAS, the jurisdictions that own and operate the Regional Jail are willing, with appropriate State partnership, to expand the Regional Jail to address public safety and operation requirements; and

WHEREAS, the City of Winchester serves as the Regional Jail's fiscal agent for capital acquisition purposes; and

WHEREAS, the Regional Jail has submitted to its member jurisdictions a draft of a Comprehensive Agreement to Develop, Design and Construct a Work Release Facility by and between Howard Shockey and Sons, Inc. and the City of Winchester.; and

WHEREAS, this Agreement has been reviewed by the County Attorney's to ensure legality of form; and

WHEREAS, the estimated maximum cost impact to Clarke County if the project is terminated would be approximately \$50,443 payable during FY 2005; and

WHEREAS, the project cost in excess of \$50,443 shall be submitted in advance to the Board of Supervisors for approval; and

WHEREAS, any other changes in the form or substance of the Comprehensive Agreement shall be submitted in advance to the Board of Supervisors for approval; now, therefore, be it

RESOLVED by the Clarke County Board of Supervisors this 20th day of July 2004 that the Comprehensive Agreement between the City of Winchester and Howard Shockey and Sons, Inc. to Develop, Design and Construct a Work Release Facility to Expand the Regional Jail is hereby approved.

John R. Staelin
Board of Supervisors Chair

Discussion Of Committee Action

Personnel

Expiration of term for appointments expiring through December 31st.

Chairman requested staff to advertise for the opening on the Historic Preservation Commission.

Discussion—notification regarding leave for key individuals.

The Personnel Committee asked key staff members to notify the Board of Supervisors members via e-mail of planned absences from the office approximately one week prior to such absences. An email mailing list was created to facilitate communication.

Discussion of Compensation Adjustments

The Board enacted no changes in salaries. Supervisor Byrd put forth that any salary adjustments be made retroactive to the first of July. Chairman Staelin requested staff to provide a report with costs for a 2% and a 3% annual increase for general government employees.

Tom Judge informed the Board that he had received the request for salary increases for the employees of the Clarke County Department of Social Services. He advised that they would also be held until August.

Board of Supervisors Work Session

Discussion and identification of secondary roads to be presented to VDOT for consideration of lowered speed limits.

Members of the Board of Supervisors reviewed secondary road speeds within their districts and submitted recommendations for VDOT review. See the VDOT Speed Studies section of the meeting minutes for additional information.

Elevator Construction Discussion

Chairman Staelin instructed David Ash to set up a meeting to further discuss options for elevator construction.

Discussion—Consensus to approve utility easement on land owned jointly with the Town of Berryville.

Discussion on this matter was deferred until the August 2004 Board of Supervisors Work Session.

Finance

PPEA Comprehensive Agreement for Design and Construction of Regional Jail Expansion—Resolution of Approval

Bruce Conover, Assistant Superintendent of the CFFW Regional Adult Detention Center, made a presentation to the Board. See the Presentation from the CFFW Regional Adult Detention Center Jail Board section of the meeting minutes for more information.

Heritage Child Development Center Request

The Heritage Child Development Center is negotiating for an expanded use of property that is encumbered by an easement held by the Board of Supervisors. A special use permit application is anticipated in the near future and the Board of Supervisors position regarding any modification of the easement will be required as part of the evaluation and consideration by the Planning Commission. The Finance Committee recommended adoption of the resolution.

Vice Chairman Hobert requested staff to provide a cover letter stating that the resolution is limited to ten years; and while future Supervisors may be willing to extend this agreement, nothing in this resolution should be construed to obligate the County to any extension or renewal. John Staelin advised that the County could still use the easement for construction traffic.

Vice Chairman Hobert moved to approve the resolution that the Board of Supervisors will not require the removal of the building located partially in the Easement for a period of ten years commencing with the adoption of this resolution as long as the building is occupied by the Heritage Child Development Center, as a non-profit organization, for early childhood education purposes. In all other respects, the County retains all of its rights in the Easement.

The motion carried as follows:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Absent
Supervisor Weiss	-	Absent

RESOLUTION

WHEREAS, by Easement dated March 10, 1997, and recorded in the Office of the Clerk of the Circuit Court of Clarke County, Virginia, in Deed Book 271, at Page 200, Clarke County acquired a 30-foot wide access easement, ("the Easement"), over property now owned by Gregory H. and Pamela P. Throckmorton, containing 4.0604 acres, located on the south side of Virginia Business Route 7; and

WHEREAS, a portion of a building located on the Throckmorton property extends into the Easement; and

WHEREAS, the Heritage Child Development Center currently leases the property from Throckmorton; and

WHEREAS, the Heritage Child Development Center is a community based, non-profit organization providing early childhood educational services to Clarke County families; and

WHEREAS, the Heritage Child Development Center desires to improve the aforesaid building to provide additional educational space for its programs; and

WHEREAS, the Heritage Child Development Center desires assurances that if it so improves the building located partially in the Easement, the County will not require the building to be removed from the Easement; and

WHEREAS, the Board of Supervisors of Clarke County supports the education programs provided by the Heritage Child Development Center.

NOW, THEREFORE BE IT RESOLVED that the Board of Supervisors will not require the removal of the building located partially in the Easement for a period of ten years commencing with the adoption of this resolution as long as the building is occupied by the Heritage Child Development Center, as a non-profit organization, for early childhood education purposes. In all other respects, the County retains all of its rights in the Easement.

Adopted this 20th day of July, 2004.

John R. Staelin
Board of Supervisors Chair

Additional discussion regarding school appropriations requests.

Public Education Standards of Quality / Local Real Estate Property Tax Relief Fund Act

School Board members Gary Hornbaker and Michael McCall appeared before the Board to address the estimated \$312,000 being provided to the County from the Public Education Standards of Quality / Local Real Estate Property Tax Relief Fund Act. Tom Judge informed the Board that the State pays \$2,632 per student per year. Mr. Judge cautioned that the additional funds are calculated on student enrollment; and if the schools have fewer children than projected, they will receive less than the estimated \$312,000. He provided the proposed resolution from the Schools.

Be it resolved that the FY 05 School Operating Budget be amended to increase expenditures by \$266,944, to appropriate the same, and to recognize revenue from the Commonwealth of Virginia of \$312,309; and be it further resolved that the FY 05 School Capital Projects Fund be amended to increase expenditures by \$45,315 for the purpose of School Construction, to appropriate the same, and to transfer local funds of this same amount from the School Operating Fund to the School Capital Projects Fund.

Chairman Staelin noted that the funds could be used to reduce the County's budget deficit. He further noted that carryover for the schools could be about \$100,000. He advised the Board that the Finance Committee requested a public hearing on the matter. Mr. Hornbaker stated that the School Board concurred.

Gary Hornbaker said that he had heard that the additional funds would be \$312,000 for FY 05 and would be even higher in the following fiscal year. Michael McCall said that School Administration had approved a 3% pay increase and was proposing an across-the-board, base-line-salary increase of \$700 for every employee of the Clarke County Schools. Mr. McCall noted that some employees would lose money as a result of increasing health insurance costs and the increases are proposed to help employees cover the rising cost of health care.

Barbara Byrd and David Weiss both questioned the \$700 baseline increase for school employees. Supervisor Weiss asked how the schools planned to cover the increased salaries if they did not get the additional \$312,000 in funding due to lower than expected enrollments. Tom Judge put forth that the schools would lose \$2,632 from the State for each student they did not get. He further advised that the School Board had not discussed how they would fund the proposed increases if all the new funding was not received.

Gary Hornbaker stated that the School Board was aware of potential problems. He said that they were trying to keep salaries competitive with surrounding jurisdictions. Supervisor Dunning asked if the School Board had information regarding actual staff turnover and administration counts. Michael McCall stated that he would get that information.

Supervisor Byrd queried what data was used to determine the estimated increase of 60 new students. She noted that last year the actual increase had been two or three new students. Mr. McCall said that he would get the information. Chairman Staelin observed that assumptions are made when determining a budget, which can result in problems only if the money is spent before it is received. Supervisor Weiss said that he saw no issues with allocating the funds as long they were received.

Supervisor Dunning moved to set the matter for public hearing on September 21, 2004, at 10:00 a.m. or as soon thereafter as the matter may be heard.

The motion carried as follows:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

Request to Waive fees on proposed Boundary Line Adjustment When Dwelling Unit Rights are Extinguished

Ian Williams, Harrison & Johnston, PLC, appeared before the Board to discuss the request of his clients to waive a portion of the fees assessed on a boundary line adjustment as the individual proposes to extinguish DUR's subsequent to the adjustment. During discussion by the Finance Committee, it was put forth that the Board of Supervisors does not waive fees; rather it approves refunds if applicants provide adequate reason. Vice Chairman Hobert opined that it was a good idea but the Board first needed to establish criteria so that they could respond to requests for reimbursement.

Chairman Staelin said that he agreed with the comments made and requested that a policy be created. He appointed Supervisor Dunning, Planning Commission liaison, and Vice Chairman Hobert, Conservation Easement Authority liaison, to review and make policy recommendations. Mr. Williams requested to be part of the policy discussions.

Temporary assistance for Economic Development Committee and IDA.

The Finance Committee recommended expenditure of funds from the economic development department budget to provide part-time clerical and secretarial assistance to the EDC and the IDA.

Vice Chairman Hobert moved to accept the recommendation to expend funds to provide part-time clerical and secretarial assistance to the EDC and the IDA.

The motion carried as follows:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Absent
Supervisor Weiss	-	Absent

Authorization for Preliminary Engineering Report and Regional Storm Water Management Plan for the Double Tollgate Commercial Area.

The Finance Committee recommended the Preliminary Engineering Report be authorized and that additional efforts to secure funding for the report not further delay the process. Vice Chairman put forth that funds could be transferred from Business Park sales. Discussion on funding sources was continued until the next regular Board of Supervisors meeting in August.

Vice Chairman Hobert moved to allow Chester Engineering to proceed with the preliminary engineering report on feasibility.

The motion carried as follows:

Chairman Staelin	-	Aye
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Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Abstain
Supervisor Weiss	-	Absent

Review of General Government Employee Compensation

Discussion on the matter of general government employee compensation was continued to the August Board of Supervisors meeting.

USGS Quarterly Update

Due to time constraints, David Nelms, USGS Project Chief, did not personally appear before the Board. The quarterly update for the period April 1, 2004 through June 30, 2004 is on file in the Board of Supervisors meeting materials for July 2004.

Bills And Claims

Supervisor Weiss reviewed the Bills and Claims for the general government for June 2004 and schools May 2004.

Supervisor Weiss moved to approve the Bills and Claims for the general government as presented.

The motion carried as follows:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

Project Update

David Ash provided the monthly project update to the Board of Supervisors.

Closed Session

Vice Chairman Hobert moved to convene into closed session pursuant to Section §2.2.3711-A7 and §2.2.3711-A4 of the Code of Virginia, to consult with legal counsel and discussion of personnel matters.

The motion was approved as follows:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

The members of the Board of Supervisors being assembled within the designated meeting place, with open doors and in the presence of members of the public and/or the media desiring to attend, **Supervisor Dunning moved to reconvene in open session. The motion carried as follows:**

Chairman Staelin	-	Aye
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Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

Supervisor Weiss moved to execute the following Certification of Closed Session:

CERTIFICATION OF CLOSED SESSION

WHEREAS, the Board of Supervisors of the County of Clarke, Virginia, has convened a closed meeting on the date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3700 of the Code of Virginia requires a certification by the Board of Supervisors of the County of Clarke, Virginia that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE BE IT RESOLVED, that the Board of Supervisors of the County of Clarke, Virginia, hereby certifies that, to the best of each members knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which the certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board of Supervisors of the County of Clarke, Virginia.

The motion was approved by the following roll-call vote:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Aye
Supervisor Weiss	-	Aye

Bill of Complaint Against Rock Builders, Inc., Sahng Gun Shim, and Blue Ridge Association of Realtors, Inc.

Bob Mitchell, attorney for the County of Clarke, provided an overview of the Bill of Complaint Against Rock Builders, Inc., Sahng Gun Shim, and Blue Ridge Association of Realtors, Inc. that was discussed during Closed Session. He advised that upon information and belief Rock Builders had, on a frequent and continuing basis, misrepresented the number of actual bedrooms to be included in homes to be built by Rock Builders. The rooms on the house plans were labeled something other than bedrooms when such rooms were designed to be used as bedrooms and/or were reasonably foreseeable to be considered bedrooms.

Mr. Mitchell put forth that Rock Builders did consistently violate Health Department permits for septic system use by building homes where the actual number of bedrooms was in excess of the number of bedrooms permitted by the VDH Sewer Permit for the property. He further stated that the number of bedrooms was represented to the buying public in excess of the number of rooms permitted under the applicable VDH Sewer Permit. He provided several examples of this practice, which are enumerated in the Bill of Complaint. Bob Mitchell advised that such practice taxed the sewer system and increases the likelihood of septic system failure, which can result in contamination of groundwater.

Bob Mitchell stated that the Bill of Complaint requests that Rock Builders, Inc. be enjoined to cease the practice of labeling rooms on the house plans as other than bedrooms when such rooms are designed to be used as bedrooms and/or are reasonably foreseeable to be considered as bedrooms. Further, to enjoin Rock Builders, Inc. from marketing, advertising or representing to the public that a dwelling being sold by it has bedrooms in excess of the

number of bedrooms permitted by the VDH Sewer Permit. Also, the suit requests that Rock Builders be ordered to disclose in writing in any contract of sale the limit on the number of bedrooms in the VDH Permit. It further requests that Sahng Gun Shim be enjoined from taking any action on behalf of Rock Builders, Inc., which would be in violation of the requested injunctions and orders. Blue Ridge Association of Realtors is requested to advise each of its members in writing that when listing, advertising, marketing, or selling property in Clarke County no representation shall be made that a dwelling contains bedrooms in excess of the number permitted by the VDH Sewer Permit.

Chairman Staelin emphasized that it was the responsibility of the Board of Supervisors to promote the health, safety and general well-being of citizens reiterating the Board's position with regard to protecting groundwater. Vice Chairman expressed his appreciation to Mr. Mitchell for the work done noting the seriousness of the matter. He requested Mr. Mitchell to aggressively pursue this matter. Mr. Mitchell, responding to questions from Mr. Hobert, said that he was looking at this as a civil, not a criminal, matter.

Supervisor Weiss stated that this practice was a violation of trust. Supervisor Byrd concurred stating that in a small community these matters touch everyone and urged all to live with honor and honesty.

Vice Chairman Hobert moved to authorize Bob Mitchell to file suit papers against Rock Builders, Inc., Sahng Gun Shim and Blue Ridge Association of Realtors, Inc. in the Circuit Court of Clarke County.

The motion was approved by the following vote:

Chairman Staelin	-	Aye
Vice Chairman Hobert	-	Aye
Supervisor Byrd	-	Aye
Supervisor Dunning	-	Absent
Supervisor Weiss	-	Aye

Summary Of Required Action

Item	Description	Responsibility
1.	Provide notification of approval of the Bluegrass Festival at Watermelon Park October 2, 2004.	David Ash
2.	Place discussion of Secondary 6-Year Plan on the September Board of Supervisors Work Session Agenda.	David Ash
3.	Advertise public hearings for September 2004.	David Ash
4.	Create database of mother-in-law cottages/tenant houses.	Chuck Johnston
5.	Advertise for the opening on the Historic Preservation Commission.	David Ash
6.	Provide a cover letter stating that the resolution for Heritage Child Development Center is limited to ten years; and while future Supervisors may be willing to extend this agreement, nothing in this resolution should be construed to obligate the County to any extension or renewal.	David Ash
7.	Provide a report with costs for a 2% and a 3% annual increase for general government employees.	Tom Judge
8.	Review and make policy recommendations regarding waiving fees on proposed boundary line adjustment when dwelling unit rights are extinguished.	A.R. Dunning, Jr. and J. Michael Hobert
9.	Set up meeting to further discuss options on elevator construction.	David Ash

<u>Item</u>	<u>Description</u>	<u>Responsibility</u>
10.	Add discussion of utility easement on land owned jointly with the Town of Berryville to August Board of Supervisors Work Session.	David Ash

Adjournment:

There being no further business, Chairman Staelin adjourned the meeting at 3:35 pm.

Next Meeting Date:

The next Board of Supervisors meeting is set for August 17, 2004, at 9:00 am in the Board of Supervisor's Meeting Room, Second Floor of the Circuit Courthouse, 102 N. Church Street, Berryville, Virginia.

ATTEST: July 20, 2004

John Staelin, Chairman

David L. Ash, County Administrator

Minutes Prepared By:
Lora B. Walburn
Deputy Clerk, Board of Supervisors